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CARVER

The Boston Globe

# Cranberry lawsuit at an end

## Man found guilty of altering wetland



Charles Johnson, 79, has spent \$2 million defending himself against EPA charges. (Steve Haines for The Boston Globe)

By Michele Morgan Bolton  
Globe Correspondent / May 26, 2011

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The prosecution of Charles Johnson began in 1990 after a neighbor questioned how he handled water in his cranberry bogs.

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Twenty-one years, \$2 million in legal expenses, and nine grandchildren later, what is believed to be the nation's longest Environmental Protection Agency enforcement action may have finally come to an end earlier this month with a federal jury finding the Carver grower guilty of illegally altering about 46 acres of wetlands on his once 400-acre property.

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After efforts to reach a compromise on a fine and penalty went nowhere following the verdict, US District Court Judge Edward Harrington set a bench trial for Sept. 19 to determine Johnson's culpability. As it stands, Johnson would have to pay at least \$75,000 in civil fines and spend another \$1.1 million to return 25 acres of working bogs on the 150 or so acres he has left to the condition they were in before the growing areas were created. Johnson, 79, had sold off the rest of his land over time to finance his defense.

The Korean War veteran doesn't hold back when he talks about his prosecution.

"This is a microcosm of what's happening all over the country," he said during a recent tour of his property. "They got bin Laden, and they got Charles Johnson and his bogs, those weapons of mass destruction."

Originally, Johnson said, his neighbor complained about his excavation of bogs along the Beaver Dam Brook, contending that he was depositing fill into the waterway. Following an investigation, federal officials concluded that Johnson had violated the Clean Water Act by altering 46 acres to create three working cranberry bogs, two of them along the banks of the brook. Although the small waterway is only several feet across and about two feet deep at that spot, it is considered a navigable waterway under EPA standards, or one that connects to commercially traveled waters, thus subject to enforcement under the statute. Eventually, the stream that trickles through Johnson's property widens and deepens and flows into the Weweantic River, and then into Buzzards Bay.

Prosecutors have made the case that Johnson was obligated to obtain a permit from the Army Corps of Engineers for any work near that waterway, yet he did not. The arguments went in circles, as he maintained that wetlands never even existed in the area until he created his bogs.

The case, which also lists Johnson's wife, Genelda, and his son Francis, who goes by Van, as defendants — the three were tried as a group — was at one time defended by the Pacific Legal Foundation, a conservative organization whose motto is "Rescuing Liberty From Coast to Coast."

Johnson said he still owes the foundation several hundred thousand dollars in legal fees. Boston attorney Michelle O'Brien, an environmental law specialist, took over the defense in December. She declined to comment.

The EPA's New England office deferred to the US attorney's office for comment.

"The government established that the defendants discharged dredged and fill material into wetlands and other waters without a permit, and a federal jury decided that the wetlands and waters were, in fact, within the jurisdiction of the Clean Water Act," said Christina Dilorio-Sterling, a spokeswoman for US Attorney Carmen Ortiz. "We cannot comment any further as the matter continues to be litigated."

On a recent sunny morning, Johnson revved up his truck and drove the narrow access roads between the growing areas on his sprawling property. He insisted that what he really did when he built his bogs was preserve natural beauty and habitat, not pollute and destroy American waters.

Johnson was 8 when his family moved to Carver from West Barnstable. As a boy, he said, he earned 25 cents an hour building, and then working, the bogs that one day he would eventually own.

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There are about 14,000 acres of cranberry bogs in Massachusetts, making it the second-largest cranberry-growing region in the world, according to the Cape Cod Cranberry Growers Association. Most of the state's 400 growers have an average farm of about 15 to 20 acres of producing bogs; that makes Johnson Cranberries stand out as one of the larger operations of the biggest agricultural crop in the state.

Johnson said that over the years federal agents have parked at Carver Town Hall and caravanned to his property, where they have camped out, canoed around his reservoirs, and taken water and other samples from at least 80 test wells that he said they had no permission to dig.

In the beginning, he said, he was accused of damaging about two acres of his land, but over time that estimate jumped to dozens of acres. "It's absurd to think we filled in 46 acres of wetlands," he said.

The Johnsons lost their original case in 2005 and appealed the matter to the US Court of Appeals for the First Circuit in Boston. An ambiguous decision by the Supreme Court in June 2006 to a challenge of the government's reach in another wetlands case prompted the Appeals Court to vacate the lower court ruling against the Johnsons and send the case back to US District Court.

Charles Johnson conceded that it might have been smarter for him to give up the fight years ago. His family wanted him to, he said, but he just couldn't let it go. Now he is angry and despondent.

"I really felt we had a good chance," he said. "I was wrong."

Over the years, he said, his farm has probably lost between \$5 million and \$6 million in income from the three bogs that have been fallow since the investigation began.

"Frankly," he said about the case, "I didn't think I'd live to see the end of it."

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